HON'BLE SRI JUSTICE L.NARASIMHA REDDY

WRIT PETITION No. 6659 of 2002

Dated 11.07.2007

Between:

B.Hanum Goud.

...Petitioner

and

The Prohibition & Excise Inspector.

...Respondent

HON'BLE SRI JUSTICE L.NARASIMHA REDDY

WRIT PETITION No. 6659 of 2002

O R D E R:

The petitioner was granted licence to do business in Arrack in Amrad Village, Makloor Mandal, Nizamabad District for the year 1989-90. The respondent issued a destraint order, dated 07.08.1998, under Section 8 of A.P.Revenue Recovery Act, 1864 (for short 'the Act') stating that the petitioner is liable to pay a sum of Rs.1,47,368/- with interest at the rate of 18% per annum. The petitioner challenges the said order, on several grounds.

The petitioner pleaded that the destraint order was not preceded by any notice, as contemplated under Section 52-B of the Act, and that no item of property was mentioned therein. It is also pleaded that the amount mentioned in the impugned order is incorrect.

The respondent filed a counter affidavit, stating that the petitioner committed default in paying the privilege fee and the issue price of the Arrack for 11 months. It is not denied that the petitioner was not issued any notice. The respondent has also admitted that the amount mentioned in the impugned order is not correct.

Heard the learned counsel for the petitioner and the learned Government Pleader for Excise.

The Act prescribes a detailed procedure in the matter of effecting recovery of amounts, as if they are arrears of land revenue. A destraint order is to be passed almost as a last resort. Before that, a notice contemplated under Section 52-B of the Act is required to be issued to the defaulter. In such an event, the recipient of the notice would have an opportunity to put forward his contentions, be it, as regards the legality of demand or the question of limitation or the correctness of the facts and figures mentioned therein etc. Such a mandatory procedure was omitted in the instant case. Straight away, a destraint order was issued. Even the facts and figures mentioned therein are not correct. The respondent categorically admitted in the counter affidavit that a mistake as to the calculation has crept in, in the impugned notice. Therefore, it is evident that the impugned order suffers from more infirmities than one.

The writ petition is, accordingly, allowed and the impugned order is set aside. It is, however, left open to the respondent to proceed further, in accordance with law. There shall be no order as to costs.

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11.07.2007

JSU